



Washington Association of  
**SHERIFFS &  
POLICE CHIEFS**

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Thursday, May 4, 2023

Honorable Members of the House and Senate,

On behalf of the Washington Association of Sheriffs and Police Chiefs (WASPC), I write again to respectfully request that the Legislature enact meaningful legislation to address the drug crisis in Washington. While we were clear that we did not support the conference report on SB 5536, we continue to believe that state legislation is the most effective and appropriate means to address this crisis. We look forward to working with you, in a bipartisan fashion, to enact meaningful legislation.

Working from the SB 5536 conference report, we offer the following amendments that would enable us to have some level of confidence in addressing our state's drug crisis. While there are additional provisions that trouble us, we recognize the need for the Legislature to come together in a bipartisan manner to reach agreement.

**Fix public use language**

The Washington Association of Prosecuting Attorneys and multiple city attorneys have identified clear failings in the language related to the newly created crime of "public use" of drugs. While we do not yet understand why the Legislature seeks to create this new offense, if it is to be created, we insist that it be enforceable. As drafted, our legal advisors have real concerns that both the underlying possession and the newly created public use offenses would be unenforceable and unprosecutable. Both the Association of Washington Cities and the Washington Association of Prosecuting Attorneys have offered language to fix these deficiencies. **We strongly request that the Legislature adopt their recommended fixes or strike language creating the new "public use" crime.**

**Modify drug paraphernalia provisions**

The conference report defines drug paraphernalia as "public health supplies" and specifically allows the distribution of "smoking equipment." We find no transparency in pretending that drug paraphernalia are "public health supplies" and no public health value in distributing smoking equipment. **We strongly request that the Legislature strike "or use of public health supplies, including, but not limited to," and "smoking equipment."**

**Remove provisions allowing public health agencies to test drugs**

While we recognize the rationale behind removing testing and analyzing equipment from the definition of drug paraphernalia, we find no value in authorizing public health agencies to perform quality assurance tests for illegal drugs. **We respectfully request that the Legislature strike any language authorizing public health and syringe service program staff taking samples and testing drugs.**

**Remove state preemption on drug paraphernalia regulation**

The Legislature should not require local governments to do nothing to combat the drug crisis in our state. While the Legislature has chosen to not regulate possession of drug paraphernalia, many local governments have, and the Legislature should not preempt that authority. **We strongly request that the Legislature strike any preemption on drug paraphernalia.**

### **Recognize separation of powers in granting diversions**

Prosecutors decide whether a person is charged with a crime, and prosecutors decide when a diversion program is to be offered. The Legislature should not grant or require diversions without the consent of the prosecutor. **We strongly request that the diversion language clearly recognize that the court cannot grant a diversion without the consent of the prosecutor.**

### **Require SUD assessments (pretrial diversion and post-conviction vacation) to be performed by licensed behavioral health agencies**

Determining whether a defendant has a substance use disorder and recommending programming and treatment is a fundamental piece of addressing the drug crisis. We find no provisions in the SB 5536 conference report establishing qualifications for those performing the assessments. **We strongly request that language be included to require that pretrial diversion assessments and post-conviction vacation assessments be conducted by a behavioral health agency licensed by the Department of Health.**

### **Require pretrial diversion program participants to complete treatment and programming as recommended by their SUD assessment**

We find value in pretrial diversion and post-conviction probation programs for those caught with drugs. Completing SUD treatment is a far more desirable outcome than simple incarceration. It is not satisfactory to substantially comply with treatment for 12 months – participants need to successfully complete all treatment and programming as recommended by their SUD assessment. **We strongly request that successful completion of pretrial diversion be defined as successful completion of all treatment and programming.**

### **Require SUD treatment programs (both pretrial diversion and post-conviction vacation) to utilize state certified SUD treatment providers**

We must recognize that not all SUD treatment providers are legitimate, and that those charged with possession and assessed with an SUD are entitled to quality treatment programs. **We strongly request that pretrial diversion programs and post-conviction vacation petitions only recognize SUD treatment programs licensed, certified, and/or accredited by the Department of Health.**

### **Clarify authority for prosecutor to seek termination of pretrial diversion**

As written, the SB 5536 conference report appears to only allow a prosecutor to make a motion to terminate pretrial diversion if the treatment program asserts that the defendant is not substantially complying with the recommended treatment. Recognizing that treatment providers have a financial incentive to retain participants in their program and that behavior unrelated to the treatment program could appropriately terminate a pretrial diversion (such as a new possession charge, a felony conviction, an offense reflecting a propensity for violence, etc), prosecutors need clear authority to seek termination of diversion wherever appropriate. **We strongly request that the diversion language be clarified to allow a prosecutor to make a motion for termination from pretrial diversion for any reason the prosecutor deems appropriate.**

### **Include post-conviction provisions from SB 5467**

While we appreciate and support pretrial diversion opportunities for those charged with simple possession, we continue to believe that the absence of post-conviction provisions is a lost opportunity. SB 5536, both as amended by the House and in the conference report, leave those who fail treatment sitting in jail. We strongly believe that the criminal justice system should be a fulcrum to get these individuals into treatment so they can be well. SB 5467, and SB 5536 as it

passed the Senate, included provisions to increase the incentive for defendants to successfully complete treatment through the imposition of clear and uniform minimum sentences for those who do not successfully complete treatment. Indeed, mandatory minimums are used here as a strategy to keep people out of jail and get them into treatment. **We respectfully request that the post-conviction provisions of SB 5467 be incorporated.**

#### **Amend RCW 10.31.110 to restore requirement that treatment providers notify law enforcement if the person abandons treatment**

As passed the Senate, SB 5536 also amended RCW 10.31.110 to strike language that was inserted with the passage of SB 5476 in 2021. The 2021 amendments allowed treatment providers to not notify law enforcement when a diversion participant violates the terms of their diversion and/or is no longer participating in services. **We respectfully request that the proposed amendments to RCW 10.31.110 be included to ensure that law enforcement is notified if/when a person violated the terms of their diversion or abandons a diversion program.**

#### **Strike any reference to “safe consumption sites”**

Section 26 (3)(b) of the SB 5536 conference report specifically references “safe consumption sites” (page 37, line 11). **We strongly request that any reference to safe consumption sites be removed.**

#### **Amend definition of “harm reduction”**

While we recognize and support some interpretations of “harm reduction” we adamantly oppose the interpretation that “harm reduction” includes helping people use drugs. **We strongly request that the definition of “harm reduction” be amended to state that harm reduction programs must advance the goal of ending the illegal use of drugs.**

#### **Require ‘sight and sound barriers’ at Recovery Residences**

The plain language of the SB 5536 conference report states that Recovery Residences are “for individuals who are waiting for treatment or who have returned to use and need a place to stay while negotiating a return to stable housing.” While we recognize that both of these populations are deserving of services, we must not allow “those who have returned to use” to erode the progress of those “who are waiting for treatment.” **We respectfully request that language be included to require Recovery Residences to maintain ‘sight and sound barriers’ between the two populations.**

#### **Require ‘sight and sound barriers’ at Health Engagement Hubs**

We recognize that, if appropriately implemented, Health Engagement Hubs may be helpful in combatting the drug crisis – for both youth and adults. We fear, however, that youth at Health Engagement Hubs may be prime targets for trafficking and other dangerous activities. **We respectfully request that language be included to require Health Engagement Hubs to maintain ‘sight and sound barriers’ between youth and any adults except service providers and their parent or guardian.**

#### **Increase appropriation for Arrest and Jail Alternative Program**

We have been proud of the success of our Arrest and Jail Alternatives (AJA) Program, and appreciate that this program is cited nineteen times in the SB 5536 conference report. We note, however, that sufficient funding has been provided to operate only 3 AJA sites. While we appreciate that the conference report provides an additional \$3.6M for this program, that amount is half of what was requested to expand capacity at the current AJA sites and establish new AJA sites – before any

consideration of the pretrial diversion program requirements created in the conference report. **We respectfully request that the appropriation for the Arrest and Jail Alternatives Program be increased to an amount sufficient to fulfill the expectations created in this bill.**

We are happy to provide bill language that reflects the provisions that we have requested in this letter. If you would like our recommendations provided in bill language format, please contact me at [james@waspc.org](mailto:james@waspc.org) or (253) 376-8492.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James McMahan", with a long horizontal flourish extending to the right.

James McMahan  
Policy Director